



STATUTORY INSTRUMENTS.

S.I. No. 674 of 2020

INDUSTRIAL RELATIONS ACT 1990 (CODE OF PRACTICE FOR
EMPLOYERS AND EMPLOYEES ON THE PREVENTION AND
RESOLUTION OF BULLYING AT WORK) ORDER 2020

S.I. No. 674 of 2020

INDUSTRIAL RELATIONS ACT 1990 (CODE OF PRACTICE FOR
EMPLOYERS AND EMPLOYEES ON THE PREVENTION AND
RESOLUTION OF BULLYING AT WORK) ORDER 2020

WHEREAS the Workplace Relations Commission and the Health and Safety Authority has prepared, under subsection (1) of section 42 of the Industrial Relations Act 1990 (No. 19 of 1990), a draft code of practice around the issue of bullying at work.

AND WHEREAS the Workplace Relations Commission and the Health and Safety Authority has complied with subsection (2) of that section and has submitted the draft code of practice to the Minister for Enterprise, Trade and Employment.

NOW THEREFORE, I, DAMIEN ENGLISH, Minister of State at the Department of Enterprise, Trade and Employment in exercise of the powers conferred on me by subsection (3) of that section and the Labour (Transfer of Departmental Administration and Ministerial Functions) Order 1993 (S.I. No. 18 of 1993), (as adapted by the Business, Enterprise and Innovation (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 519 of 2020) and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2020 (S.I. No. 579 of 2020) hereby make the following order:

1. This Order may be cited as the Industrial Relations Act 1990 (Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work) Order 2020.

2. It is hereby declared that the code of practice set out in the Schedule to this Order shall be a code of practice for the purposes of the Industrial Relations Act 1990 (No. 19 of 1990).

SCHEDULE

**Code of Practice for Employers and Employees on the Prevention and
Resolution of Bullying at Work**

(23/01/2020)

Contents

Foreword	3
Status and Scope of the Code under Health and Safety Legislation	4
Status and Scope of the Code under Workplace Relations Legislation	5
1. Introduction	6
1.1 Consultation	6
1.2 Aim	6
2. What are Harassment and Bullying at Work?	7
2.1 What is Harassment at Work?	7
2.2 What is Bullying at Work?	8
2.3 How does Bullying manifest itself within Workplaces?	8
2.4 Who Bullies at Work?	9
2.5 Why deal with Bullying at Work?	9
2.6 What is not Bullying at Work?	10
2.7 Who is involved in Bullying at Work?	11
2.8 What are the effects of Bullying at Work?	12
3. Management of Bullying at Work	13
3.1 Prevention	13
3.2 Preventative Measures/Actions	14
3.3 Contact Person Role	16
4. Intervention in Workplace Bullying	17
4.2 Formal Process	22
5. Conclusion of Formal Process and Follow Up	26
5.1 If Internal Procedures Do Not Resolve a Bullying Complaint	26
5.2 Communications of Outcomes	26
6.1 Role of the HAS	28
6.2 Role of the WRC	30
6.3 Role of HSA & WRC in the Prevention of Workplace Bullying	31
Appendix 1	32
Appendix 2	37
Appendix 3	48

Foreword

The Health and Safety Authority (HSA) and the Workplace Relations Commission (WRC) were requested by the Minister of State for Trade, Employment, Business, EU Digital Single Market and Data Protection to review their respective Codes of Practice on bullying in the workplace and to develop a single Joint Code, encompassing both organisations' remit and responsibilities in this area.

This Code of Practice comes into effect on 23 December 2020 and from that date it replaces the Code of Practice entitled "Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work" which was issued by the HSA in March 2007 in accordance with the Safety, Health and Welfare at Work Act 2005 and the "Code of Practice Detailing Procedures for Addressing Bullying in the Workplace" issued by the then Labour Relations Commission LRC (now WRC) in 2002 in accordance with section 42 of the Industrial Relations Act 1990.

Notice of issue of this Code of Practice, and the withdrawal of both Codes of Practice, is published in the Iris Oifigiúil.

Status and Scope of the Code under Health and Safety Legislation

Section 60 of the Safety, Health and Welfare at Work Act 2005 (the 2005 Act) empowers the HSA to prepare and publish Codes of Practice or any part of a Code of Practice with respect to safety, health and welfare at work for the purposes of providing practical guidance to employers and employees.

This Code of Practice provides practical guidance for employers on identifying and preventing bullying at work arising from their duties under section 8 (2) (b) of the 2005 Act as regards ‘managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health and welfare at work of his or her employees at risk’. It also applies to employees in relation to their duties under section 13 (1) (e) of the 2005 Act to ‘not engage in improper conduct or behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person’.

This Code applies to all employments in Ireland irrespective of whether employees work at a fixed location, at home or are mobile.

Extracts from the 2005 Act which are relevant are set out in Appendix 2:

Failure to follow this Code is not an offence in itself. However as regards the use of Codes of Practice in criminal proceedings, section 61 of the 2005 Act provides as follows-

“61. (1) Where in proceedings for an offence under this Act relating to an alleged contravention of any requirement or prohibition imposed by or under a relevant statutory provision being a provision for which a Code of Practice had been published or approved by the Authority under section 60 at the time of the alleged contravention, subsection (2) shall have effect with respect to that Code of Practice in relation to those proceedings.

(2) (a) Where a Code of Practice referred to in subsection (1) appears to the court to give practical guidance as to the observance of the requirement or prohibition alleged to have been contravened, the Code of Practice shall be admissible in evidence.

(b) Where it is proved that any act or omission of the defendant alleged to constitute the contravention:

is a failure to observe a Code of Practice referred to in subsection (1), or

is a compliance with that Code of Practice,

then such failure or compliance is admissible in evidence.

A document bearing the seal of the Authority and purporting to be a Code of Practice or part of a code of practice published or approved of by the Authority

under this section shall be admissible as evidence in any proceedings under this Act.”

Status and Scope of the Code under Workplace Relations Legislation

Section 42 of the Industrial Relations Act 1990 provides for the preparation of draft codes of practice by the Workplace Relations Commission for submission to the Minister for Business, Enterprise and Innovation. Codes of Practice are written guidelines, agreed in a consultative process, setting out guidance and best practice in regard to industrial relations practice and compliance.

This statutory function fits within the WRC’s overall remit of promoting improvement and maintenance of good workplace relations; promoting and encouraging compliance with relevant employment, equality and equal status legislation and Codes of Practice; conducting reviews of, and monitoring developments in, workplace relations generally.

The WRC’s core services reflect these functions and include early dispute resolution, mediation, conciliation, facilitation and advisory services, and adjudication on complaints and disputes.

While failure to follow a Code prepared under the Industrial Relations Act, 1990 is not an offence in itself, Section 42 (4) provides that in any proceedings before a Court, the Labour Court or the Workplace Relations Commission, a code of practice shall be admissible in evidence and any provision of the Code which appears to the court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

This Code of Practice replaces the Code of Practice entitled “Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work” which was issued by the HSA in March 2007 in accordance with the Safety, Health and Welfare at Work Act 2005 and the “Code of Practice Detailing Procedures for Addressing Bullying in the Workplace” issued by the LRC in 2002 in accordance with Section 42 of the Industrial Relations Act 1990.

1. Introduction

1.1 Consultation

In accordance with the provisions in the legislation referred to above, the HSA and the WRC consulted with several representative organisations and stakeholders, within their respective remits, including the Irish Congress of Trade Unions (ICTU), Irish Business and Employers' Confederation (IBEC) and some Government Departments.

A draft of this Code was also put to public consultation. The inputs made by those organisations and from public consultation were considered and where appropriate, included in the material developed for this Code.

1.2 Aim

The purpose of this Code is to provide guidance for employers, employees and their representatives on good practice and procedures for addressing and resolving issues around workplace bullying.

Specifically, the Code:

- provides practical guidance on identifying, managing and preventing bullying at work arising from employers' duties under section 8 (2) (b) of the 2005 Act;
- is based on good industrial relations principles governing effective engagement and processes in the workplace;
- highlights the procedure to be put in place by employers and the need to clearly state that bullying in the workplace is not acceptable and complaints of bullying will be dealt with sensitively. The Code reinforces obligations for employers to progress complaints informally where possible, and otherwise, as appropriate, formally;
- emphasises the importance of records being kept of interventions and decisions in line with General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018; and

clearly identifies the roles and responsibilities of both organisations responsible for this Code and outlines these graphically by way of a flow chart

2. What are Harassment and Bullying at Work?

2.1 What is Harassment at Work?

The interchangeable use of the words harassment and bullying can lead to a misunderstanding of what each one relates to. They are legally distinct concepts and so a behaviour can be deemed *either* bullying *or* harassment, not both. This Code refers to behaviours which come within the definition of workplace bullying only. The code does not extend to harassment under the Employment Equality Acts 1998-2015.

Harassment/sexual harassment for the purposes of the Employment Equality Acts is any unwanted conduct related to any of the discriminatory grounds under the Employment Equality Acts. Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature. Discrimination on the basis of the nine grounds specified in the Acts (Gender, Civil Status, Family Status, Sexual Orientation, Religion, Age, Disability, Race and Membership of the Traveller Community) comes under the remit of the Employment Equality Acts and promoting awareness of equality in the state is the responsibility of the **Irish Human Rights and Equality Commission**¹ (IHREC). In this regard IHREC has published a Code of Practice on Sexual Harassment and Harassment at Work giving practical guidance on addressing issues around harassment at work (Statutory Instrument 208 of 2012 Employment Equality Act 1998 (Code of Practice) (Harassment) Orders 2012).

While this Code refers to workplace bullying only and doesn't include harassment cases, this does not prevent employers from having one policy/document encompassing procedures for processing both bullying and harassment cases.

It is, however, important to reiterate that where individuals reference 'a bullying and harassment' case, the two are distinct concepts and the agencies overseeing this Code only have a remit for bullying.

¹ <https://www.ihrec.ie/>

2.2 What is Bullying at Work?

For the purposes of this Code, bullying in the workplace is defined as follows:

"Workplace bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could be reasonably regarded as undermining the individual's right to dignity at work². **An isolated incident of the behaviour described in this definition may be an affront to dignity at work, but, as a once off incident, is not considered to be bullying**".

This Code does not aim to address physical assault at work. The HSA advises that where it may be a risk, or where it has occurred and is therefore established as a future risk, the employer has and uses a dedicated policy concerning violence and assault and retains and promotes a zero-tolerance approach to such behaviour, from any quarter. Violence is a criminal matter and should also be reported to *An Garda Síochána*.

2.3 How does Bullying manifest itself within Workplaces?

In line with the above operational definition, workplace bullying should meet the criteria of an on-going series of accumulation of seriously negative targeted behaviours against a person or persons to undermine their esteem and standing in a harmful, sustained way. Bullying behaviour is offensive, on-going, targeted and outside any reasonable 'norm'. A pattern and trend are involved so that a reasonable person would regard such behaviour as clearly wrong, undermining and humiliating. It involves repeated incidents or a pattern of behaviour that is usually intended to intimidate, offend, degrade or humiliate a particular person or group of people - but the intention is not important in the identification process.

Bullying activities involve actions and behavioural patterns, directly or indirectly, spoken and/or written and could include the use of cyber or digital means for the goal of bullying. Such bullying events, delivered through cyber means, may also be covered by the requirements of the 2005 Act.

Behaviour which makes for a bullying pattern will likely include not just one but a range of the following behaviours:

- Exclusion with negative consequences

² Report of the Task Force on the prevention of workplace bullying, 2001. Also used in the 2005 Report of the Expert Advisory Group on Workplace Bullying and in the surveys conducted by the ESRI to determine the incidence of workplace bullying.

- Verbal abuse/insults
- Being treated less favourably than colleagues in similar roles
- Belittling a person's opinion
- Disseminating malicious rumours, gossip or innuendo
- Socially excluding or isolating a person within the work sphere
- Intrusion - pestering, spying or stalking
- Intimidation/aggressive interactions
- Excessive monitoring of work
- Withholding information necessary for proper performance of a person's job
- Repeatedly manipulating a person's job content and targets
- Blaming a person for things beyond their control
- Use of aggressive and obscene language
- Other menacing behaviour

2.4 Who Bullies at Work?

It is not possible or advisable to engage in guess work or stereotyping in relation to those who bully. It may be that those who bully have general difficulty working with others, adapting to changing circumstances or handling conflict. However, people with these characteristics may also not bully, so each case should be taken on its own merit as generalisations are unhelpful in resolving bullying complaints. Good job design for all, adequate and effective training for all and proper supervision can help ensure a workplace where any conflict or issues around behaviours are dealt with fairly and effectively.

2.5 Why deal with Bullying at Work?

A feeling of being victimised or targeted negatively impacts performance and productivity at work as well as a person's mental wellbeing, and it is best to prevent situations arising where bullying is facilitated.

Bullying can have serious effects for both the person being bullied, for an individual who wrongly feels bullied but who is engaged instead in a conflict situation, and for those who are accused of bullying. For an employer, bullying can result in **dysfunctional work environments, low morale, lost time and litigation issues.**

2.6 What is not Bullying at Work?

It is important to distinguish bullying from other inappropriate behaviours or indeed appropriate workplace engagement. As set out in the definition above, a once-off incident of bullying behaviour may be an affront to dignity at work and may be unsettling, but does not of itself make for an adequate level of distress as to fall within the definition of bullying and other remedies should be sought for these scenarios. As a once-off, such behaviours cannot be presumed to be done in a targeted, purposeful and unremitting way.

Apart from once-off behaviours, other on-going behaviours which may upset or unsettle a person may not come within the bullying definition either. Behaviour considered bullying by one person may be considered routine interaction by another, so the 'reasonableness' of behaviours over time must be considered. Disrespectful behaviour, whilst not ideal, is not of itself bullying. Conflicts and disagreements do not, of themselves, make for a bullying pattern either. There are various workplace behavioural issues and relationship breakdowns which are troubling, upsetting and unsettling but are not of an adequate level of destructiveness to meet the criteria required for a bullying case.

Objective criticism and corrections that are intended to provide constructive feedback to an employee are not usually considered bullying, but rather are intended to assist the employee with their work.

Bullying does not include:

- Expressing differences of opinion strongly
- Offering constructive feedback, guidance, or advice about work-related behaviour which is not of itself welcome
- Ordinary performance management
- Reasonable corrective action taken by an employer or supervisor relating to the management and direction of employees (for example managing a worker's performance, taking reasonable disciplinary actions, or assigning work)
- Workplace conflict where people disagree or disregard the others' point of view

This list is not exhaustive

2.7 Who is involved in Bullying at Work?

Bullying at work can involve people in many different work situations and at all levels:

- Manager/supervisor to employee
- Employee to supervisor/manager
- One employee to another (or group to group)
- Customer/supervisor/manager to business contact
- Client/customer to employee

Factors which are known to be associated with a risk of bullying at work are:

- High turnover of staff, high absenteeism and/or poor morale
- Mismanagement or poor management of relationships in the workplace - bullying is more likely to be a factor in workplaces that do not have an effective management system based on respect and awareness or sensitivity to the impact of behaviour on others
- Gender/age/status imbalance
- Other factors - composition of the workforce, interface with the public, history of tolerance of unacceptable behaviour, lack of/inadequate procedures or no adherence to procedures
- Absence of clear reporting structures and clear job/role descriptions

2.8 What are the effects of Bullying at Work?

Workplace bullying, and related complaints can have a range of effects on all concerned - the individual being bullied of course, but also team members, colleagues, others in the organisation and the person being accused of bullying. For the employer, the effects can include reputational damage, absences of employees from the workplace, reduced productivity, increased costs, poor morale and loss of respect for managers and supervisors. For the employee concerned, (i.e. the target of the bullying behaviour) the effects can include stress, associated physical and/or mental ill health, low morale, reduced performance and lower productivity. Some people decide to leave their employment, exposing themselves to financial and other strains by so doing. For an innocent party who is the subject of a complaint, or unaware of the effects of the behaviour (i.e. the person accused of bullying), the consequences can likewise be significant in terms of anxiety, panic, distress and potential social embarrassment/career damage. The effects of even one complaint of alleged bullying are pervasive across an organisation. Both individuals involved will likely be negatively impacted, as may their respective teams, managers and the broader groups and co-workers around them at the workplace. The spiralling negative consequence of bullying claims cannot be over-stated so it is in the best interests of all concerned to have robust preventive approaches and effective clear, transparent

procedures in place, which are used effectively. All involved, but especially managers and those in positions of authority, should be competent and capable of managing such matters efficiently and effectively. Roles and responsibilities in that regard should be made known to all.

3. Management of Bullying at Work

3.1 Prevention

Every individual in the workplace has a role in promoting a positive workplace free from bullying behaviour.

3.1.1 Role of Employers

Each employer should:

- Uphold the duty to manage and conduct work activities in such a way as to prevent any improper conduct or behaviour likely to put at risk an employee's safety, health or welfare at work. This duty on employers means that they must act reasonably to prevent workplace bullying patterns developing and where there are complaints, the employer must react reasonably, assess a complaint, record actions and put in place a suitable response based on each case arising.
- Prepare a **Safety Statement** under *section 20* of the **2005 Act**, based on an identification of the hazards to safety, health and welfare at the place of work, an assessment of the risks involved and setting down the preventive measures necessary to protect safety, health and welfare. Risk is the likelihood of a hazard causing harm and the extent of that harm.
- Develop a proper workplace anti-bullying policy, in consultation with employees, to ensure a system is in place for dealing with complaints and that disciplinary action may follow where bullying is found to have occurred. (Template in Appendix 1) Consultation with employees on health and safety matters is required under Section 26 of the 2005 Act, in addition to the requirements of Sections 8 and 9 of the Act.

3.1.2 Role of Employees

Each employee should:

- create a co-operative relational climate within the workplace by their own behaviour. How they behave and how that behaviour is responded to feeds into a broader sense of what is acceptable. Employees both individually and within teams and groups, have a role in promoting positive behaviour to others, relating in clear, civil and respectful ways to everybody in the workplace. Employees have duties under the 2005 Act to conduct themselves properly in relation to others at work. Under *section 13* – employees duties include to:
- comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect his or her safety, health and welfare and the

safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work,

- co-operate with his or her employer or any other person so far as is necessary to enable his or her employer or the other person to comply with the relevant statutory provisions, as appropriate, and
- not engage in improper conduct or other behaviour that is likely to endanger a person's own safety, health and welfare at work or that of any other person at work or during the course of their employment.

3.1.3 Organisational Culture

The culture of an organisation is an important factor in creating, establishing and maintaining a positive workplace environment free from bullying, intimidation or any on-going negative behaviour which might lay the foundation stone for a bullying culture. There are several elements important to a positive workplace including good leadership (leading by example), a culture of involvement and a proper flow of communication, intolerance of inappropriate behaviour, training of staff on acceptable behaviour or conduct, an open and transparent pattern of relating based on mutual respect and dignity for all. A positive culture is one in which employees are comfortable raising issues of concern to them, especially of inappropriate behaviours and where there are supportive, effective and fair processes underpinning this in place.

3.2 Preventative Measures/Actions

- Promotion and reinforcement of a positive workplace culture
- Effective Anti-Bullying policies* developed, used and promoted regarding improper and proper behaviours
- Widespread policy awareness
- Appropriate training as required for those managing complaints and for line management
- Contact Person/appropriate advisory support services available, where possible
- Clear roles and goals for all

*Go to '**How to Prepare an Anti-Bullying Policy** in Appendix 1

3.3 Contact Person Role

There may be value in appointing a Contact Person who acts as the first step for anyone enquiring about a possible bullying case. Where the organisation can support this, it often helps to resolve matters earlier and more effectively. The role of the Contact Person generally would be a supportive one: to listen, and offer guidance on options in line with company policy and procedures, all on a strictly confidential basis. This may not be practical for all organisations, however, where it is the chosen route, personnel for this role should be carefully selected and trained. The main purpose of the role is supportive listening and information provision. The Contact Person will have no role in the investigation of any complaints and should not be tasked with any further involvement in the details or right and wrongs of a complaint.

Employers may also utilise previously chosen 'Designated Persons' for roles within this arena, but as a Contact Person, they will thus have no role in investigations.

4. Intervention in Workplace Bullying

Responding to a Workplace Bullying Complaint at the workplace

Early Intervention Matters

Any complaint about, or awareness of, alleged bullying requires quick, calm and consistent attention. As a general principle, it is worth emphasising that early intervention offers the best possible potential for a good outcome, particularly regarding restoring workplace relationships. However, this does not equate with a rushed approach. Each case should be treated on its own merit. A matter that is protracted, for whatever reason, becomes more difficult to resolve in a positive way. Set out hereunder is both an informal and formal procedure for dealing with a workplace bullying complaint.

The Value of Mediation

Mediation is an important consideration for resolving issues at an early stage. It is an informal voluntary process where an impartial and competent third party enables individuals to work through conflict or disagreement, with a view to improving their relationship. It is a valuable tool at any stage in a procedure, but particularly beneficial at the earliest possible stage. It is established that the earlier a mediation process is used, the greater the potential for resolving the matter satisfactorily. It is important that suitably qualified mediators, whether internal or external, are used.

4.1 Informal Process

4.1.1 Initial informal Process

A prompt and informal problem-solving approach offers the best potential for addressing allegations of bullying effectively. This collaborative and non-adversarial approach is particularly important in situations where people

must continue to work together into the future. There are several elements to a good informal process:

- People being confident that they will be listened to, will be taken seriously and that their issues will be assessed fairly, quickly and effectively.
- Managers having the confidence and capacity to engage on such issues and to respond and consult appropriately.
- Confidentiality to be respected by all.
- A focus always on the future workplace relationship and a problem-solving orientation.

An informal approach may effectively address the unwanted behaviour without recourse to any other action. Sometimes the person who is alleged to be engaging in the behaviour is genuinely unaware that the behaviour being complained of is disrespectful or unwelcome or undermining and/or causing distress.

Recommended steps in an informal process are:

- In the first instance, the unacceptable behaviour/acts should be raised by the target employee (the person who feels bullied) with the person involved but only if they feel comfortable in doing so. This should be done quickly and calmly, focusing on the facts regarding acts done and their consequences.
- If it is more suitable, the individual who perceives that they are the recipient of unacceptable behaviour should put their concerns in writing, again focusing on the offending acts and their effects on them.
- Where an employee perceives that the concerns relate to an immediate manager, the employee may wish to discuss the matter informally with their manager's manager or a person at the next level of management.
- The employee may wish to avail of the support of a Contact Person, where applicable, for guidance and to get a copy of the Anti-

Bullying Policy document.

- The focus of the above is to seek to resolve the matter informally by agreement without recourse to any other step. An informal discussion is often sufficient to alert the person concerned to the effects of the behaviour alleged and can lead to a greater understanding and an agreement that the behaviour will stop. It can also lead to an explanation of the original intention of the behaviour and/or an agreement to modify the behaviour. On the other hand, it may be that the behaviour is valid and reasonable and the reaction of the offended party is at odds with the generally accepted understanding of the behaviour.

In the context of being aware of an allegation by an employee, and whether the matter has been resolved, there may be value in the employer nominating a person to review good practice generally in the workplace around dealing with such matters. For example, an awareness campaign highlighting examples of appropriate behaviour as well as improper behaviour and some explanation of effects to be brought to everyone's attention.

A brief written record, in line with relevant data protection legislation, should be kept of the matter and agreed outcomes and dates noted by the relevant person responsible for managing the complaint.

In smaller organisations, the employer, or person heading that organisation, should not try to informally resolve a complaint personally but should instead refer the matter for resolution/management to a senior manager, or such other persons as may be agreed. This is to prevent any duplication of roles of the employer, should the issue be later on referred to them for a judgement/appeal.

In such organisations also, where internal structures are limited, if the complaint made is against a senior person within the enterprise, it may be necessary to use the expertise of an independent professional body to access mediation or conciliation or some other form of resolution. Such bodies may include the Mediation Services of the WRC. Even in larger organisations, external assistance may be required in order to initiate an effective early solution.

4.1.2 Secondary Informal Process

If the above is unsuccessful or if the complainant or the employer deem it inappropriate for the seriousness of the issues, this more protracted, yet still informal system can be put in place.

- The employer may nominate a separate person who has had appropriate training and experience and who is familiar with the procedures involved to deal with the complaint on behalf of the organisation. This person should not be the Contact Person. They may be a supervisor/manager or someone in authority within the organisation. For each complaint that arises, such a person should be assigned to deal with that particular case. This is a very important role and pivotal in altering bullying cultures and handling complaints effectively at the informal stage. Effective guidance and training should be in place for those who are engaged at this level with the process.
- The complaint may be verbal or written. If verbal, a written note of what is complained of should be taken by the nominated person and a copy given to the complainant.
- This nominated person (who may be a manager), managing the complaint, should then establish the facts, the context and then the next course of action in dealing with the matter under the informal procedure.
- If the complaint concerns alleged bullying as defined and includes concrete examples of inappropriate behaviour, the person complained against should be presented with the complaint and their response established.
- Thereafter a method should be agreed to progress the issue to resolution so that both parties can return to a harmonious working environment without bullying being a factor.
- If the behaviour complained of does not concern alleged bullying as defined, an alternative approach should be put in place and a rationale recorded. If there are no concrete examples given, it must be deemed that there is no complaint to be answered by the person complained of as they have no recourse to repudiating an accusation that doesn't give

any specifics.

- Line managers should be kept informed, as appropriate, about the process in train.
- Steps to stop the bullying behaviour, where it has been partly or fully identified, and monitor the situation along specified lines should be implemented with both parties. This may involve a direct or indirect approach and possible resolution through a programme to change behaviour. It may also involve mediation by an agreed mediator who is practised in dealing with alleged bullying at work.
- Enough time needs to be allowed for the mediation or on-going monitoring process to be successful and behaviour change to be realistically achieved over the longer term. It may be necessary to consider if other working arrangements are required or feasible during this short-term phase. A proposal should be made, considered, and an action and time frame established, signed and dated, preferably by both parties.
- The nominated person who was responsible for managing the complaint should keep **a nominal record** of all stages; the complaint, the first meeting, action agreed and signed records of the final meeting. The purpose of the records, which do not include detail of discussions, is to provide evidence of the complaint having been met with an organisational response and attempt at resolution. Records should be kept in accordance with relevant Data Protection Legislation (section 2 (1) governing Retention), within an agreed Human Resources system and be available only to that legislation.
- Information disclosed in the course of mediation must remain within the mediation process and must not be given by the mediator to anyone or to an investigator if there is a subsequent investigation at formal stage.
- Confidentiality is crucial for this stage to be effective and breaches of confidentiality, where exposed, should be met with sanctions highlighted in advance.

4.1.3 Closure of Informal Stage

The following are some of the steps that should ideally be used to close off informal proceedings, ensuring that both parties have their rights met:

- to obtain closure after a resolution is found through informal procedures both parties should be given support or periodical reviews, insofar as is reasonable, which, if necessary, could include counselling or other appropriate interventions or support services;
- where a complaint has been assessed as vexatious, the matter should be progressed through other relevant procedures; and
- in many situations, with the co-operation of all parties, the matter can rest here.

4.2 Formal Process

It is good practice that all informal resolution avenues - as set out above - should be contemplated and where appropriate, exhausted before a formal process is invoked. Proceeding to a formal process should not be viewed as automatic and it is important that it is recognised that it is the reasonable evidence-based decision of management. Escalating a complaint to a formal process should only be done following a review of all aspects of the circumstances surrounding matters complained of. Being able to evidence a reasonable decision-making process is important and may be required to defend the employer's duty at a later stage so a record of that should be kept by the appropriate person acting for the employer.

This process includes a formal complaint and a formal investigation. The purpose of an investigation is to set up a fact-finding approach and determine the facts and credibility or otherwise of a complaint of alleged bullying. It is a significant step and all parties should be aware of possible consequences. In particular, an investigation will make it more difficult to restore normal workplace relations and may not have the desired outcome for the parties concerned. The outcome of an investigation may eventually, separately lead to a disciplinary process being instigated in respect of the person complained of, but the investigation itself will be a fact-finding one with the focus on what occurred or did not occur.

Where an investigation is to be carried out, the procedures outlined below should be followed.

4.2.1 Formal Complaint

The complainant should make a formal complaint in writing that should be signed and dated. Where this is not possible, a written record should be taken of the complaint by the assigned person and signed by the complainant and dated.

The complaint should be confined to precise details of alleged incidents of bullying, including their dates, and names of witnesses, where possible.

The complainant and the respondent should be advised of the aims and objectives of the formal process, the procedures and approximate ideal timeframe involved, and the possible outcomes. Both parties should be assured of support as required throughout the process.

An initial meeting should be organised by the employer at which each person is met with separately, starting with the person making the allegation. The other party, when met with, should be given a copy of the complaint in full and both should be given any relevant documents including the company Anti Bullying Policy.

4.2.2 Investigation

The investigation should be governed by terms of reference which should include the following:

- The investigation will be conducted in accordance with the employment's Anti Bullying Policy which should reflect this Code of Practice.
- An indicative timescale for its completion - this timeframe should be proposed, and its rationale explained.
- The scope of the investigation, sets out the procedure to be adopted for findings of fact related to the complaint and a statement that the investigator will consider, based on the facts before them whether the behaviour(s) complained of, on the balance of probabilities, have occurred.
- Confidentiality of the process should be emphasised to all concerned.

All parties to the process have a responsibility to participate without undue delay in any investigation initiated in response to an allegation of bullying.

The scope of the investigation should indicate that the investigator will decide based on the facts before them whether the behaviour complained of may, on the balance of probabilities have occurred. The investigator should not uphold or dismiss the allegations and/or suggest or impose sanctions.

Statements from all parties, including witnesses should be recorded in writing as the use of written statements tends to make matters clearer from the outset and maintains clarity throughout the investigation. Copies of the record of their statements should be given to those who make statements to the investigator. Copies should also be provided to the complainant and the person complained of and should result in findings of fact only.

If possible, all parties should continue to work normally during the investigation.

The objective of an investigation is to ascertain whether, on the balance of probabilities, the behaviours complained of occurred, it having already been established that the behaviours come within the description of workplace bullying. Details of the complaint, responses of the person complained of, witness statements and other relevant evidence are relied on for this purpose.

The investigation should be conducted by either a designated member(s) of management (as outlined earlier in this Code) or, if necessary, (for example in the case of any possible conflict of interest) an independent third party. In either case, the person nominated should have appropriate training and experience and be familiar with the procedures involved. The investigation should be conducted thoroughly, objectively, with sensitivity, utmost confidentiality, and with due respect for the rights of both the complainant and the person complained of.

The investigator should meet with the complainant and the person complained of and any witnesses or relevant persons on an individual confidential basis with a view to establishing the facts.

A work colleague or employee/trade union representative (provided the person has representation in line with the principles of natural justice and fair procedure) may accompany the complainant and the person complained of, if so desired.

The investigation will consider all material and evidence before it and a decision will be made on balance of probability, as to whether the complaint is valid. If the investigator concludes that the accused employee has a case to answer on the balance of probability, then the investigator may recommend whether or not the employer should invoke the Disciplinary procedure.

4.2.3 Appeals

Within the workplace formal system, an appeals process for both parties should be in place. The reason for the appeal should be outlined in writing to management if such an option is being taken. The time period for an appeal should be specified in the policy. The appeal should be heard by another party, of at least the same level of seniority as - but preferably more senior than - the original investigator. This party should have had no involvement in the investigation. The appeal should focus on the conduct of the investigation in terms of fair process and adherence to procedure. It should be noted that an appeal is not a re-hearing of the original issues. The outcome of the appeal shall be final insofar as the employer duties under health and safety legislation is required.

Very small and micro organisations will need to consider at the outset of the formal process how they would manage a request for appeal and this may require outside independent support.

4.2.4 Management of Malicious Complaints

A malicious complaint can be described as an allegation being made without foundation, and with malicious intent, where a person knowingly or without regard to whether it is true or not, accuses another person of allegedly bullying them. This could also apply to where one person maliciously complains of someone allegedly bullying a third party, without fully exploring the veracity of the claim.

A malicious complaint has the power to disrupt another person's life to a significant extent and the potential damage should not be underestimated. Being accused of bullying can have a serious impact on any person and reduce his or her reputation in the eyes of others, even if later shown to not have been proven. Those making complaints - and those involved in early assessment of the circumstances of a complaint - should always be mindful

of the context and situational aspects of the event and accept the different perspectives and points of view different people bring to the same event.

Making a malicious complaint, if proven, can have serious implications for the employment of the person making such a complaint and this includes disciplinary action, where established.

5. Conclusion of Formal Process and Follow Up

It must be accepted that investigations can result in very divisive relationships for individuals, teams and departments and some type of reconciliation or rehabilitative meetings, or team working session may be considered as appropriate to restore healthier working communication for the future. In many situations, with the co-operation of all parties, the matter can rest here.

The employer should decide, in light of the investigator's report and the findings of fact therein, what action is to be taken arising from that report. The employer shall then, in writing, inform both the complainant and the person complained against, of the next steps. At the end of the formal process, documentation should be kept by the employer, in line with the relevant Data Protection Legislation.

5.1 If Internal Procedures Do Not Resolve a Bullying Complaint

If full utilisation of the range of available internal procedures has not resolved a bullying complaint, the matter may be referred to a WRC Adjudicator under Section 13 of the Industrial Relations Act, 1969. (See Section 6.2)

The Adjudicator will not rehear the substance of the case. A number of outcomes are possible; the Adjudicator may conclude that the investigation was conducted properly and fairly and hence its conclusions should stand. The Adjudicator may, on the other hand conclude that the investigation process was flawed in some respect and could recommend, for example, that the investigation be reheard.

Where a person makes a complaint to the HSA regarding a complaint made by them, or a complaint made against them, the HSA will instigate its own procedures in line with its statutory remit, as outlined in the next section.

5.2 Communications of Outcomes

Effective communications of any outcome is critical. In this regard employers should ensure that outcomes are communicated sensitively and fairly. All parties directly involved in the complaint (i.e. complainant(s) and respondent are entitled to know whether the complaint is upheld in whole or in part, or if it is not upheld, the reason why). For the avoidance of doubt, specific details of disciplinary action to be taken against any party are confidential and other parties are not entitled as a matter of course to receive this information as part of the outcome. Health and Safety duties on employers require that, having identified a hazard, they must put control measures in place. These involve prevention actions, managed elimination of the behaviour, protective measures and remedial actions, where appropriate. They should also keep records of all such actions taken.

6. Role of the HSA and the WRC

6.1 Role of the HSA

6.1.1 Introduction

There are a range of state and non-state agencies which have a function in the area of workplace bullying. Different pieces of legislation also have a bearing in preventing and managing bullying cases, some before the event, others in the management of cases as they arise and others still, after the fact.

As this Code has been developed by two state agencies, only the roles of these two agencies are outlined here. However, interested parties can also seek information on the varying roles and scope of other organisations elsewhere.

The HSA operates under the statutory powers of the 2005 Act. Its purpose is to provide protection for employees in all places of work in the Republic of Ireland. The overarching tenet of the 2005 Act is to oversee the employer duty to ensure everyone at work is provided with a workplace and system of work which is, as far as is reasonably practicable, free from risk to health and to safety.

There are, within the 2005 Act, specific duties on employers and others on employees, to uphold and promote this standard, as well as a healthy and safe culture. There are provisions within the 2005 Act which are relevant to the issue of workplace bullying, both directly and/or indirectly. Section 8 2 (b) directly references ‘improper conduct’ and the employer duty to ensure the workplace has an adequate system in place to prevent such conduct. Section 19 (Hazard Identification and Risk Assessment) and section 20 (Safety Statement) reference the employer duty to have in place adequate systems of work and to record these actions in written form. Section 13 (Duties of Employee) includes the employee duties to cooperate with such employer activities.

6.1.2 System for processing bullying complaint/cases

As well as engaging in promotion and awareness raising activities, the HSA provides a public facing phone and email Workplace Contact Unit (WCU), where employees who consider themselves to be bullied can report their issue. Employees can either report it as a complaint or, if they are seeking information about the topic and/or are unsure as to whether or not their experience is, in fact, bullying, they can contact WCU to make an enquiry. This latter approach will be recorded as a ‘Request for Information (RFI)’.

The WCU responds to RFIs by providing either a verbal or written answer to the customer, or, if they are not in a position to answer the query, they will forward the RFI to an appropriate person who will respond.

Where a complaint is made concerning bullying, it can be classified in various ways, depending on its content and the nature of the complaint. The first filter every complaint goes through is to assess whether or not, noting the behaviours

complained of, the issue falls within the definition and scope of a bullying complaint (see **What is bullying at work?** page 8).

If the complaint concerns a person who feels they are being bullied, and what they describe falls within the scope of workplace bullying and they report that the employer is not taking any action, that matter will be recorded by WCU and the employer contacted to assess their response and follow up to the matter insofar as the employer's action is concerned.

Where the complaint is that the employer did take action, but the employee is unhappy with the action or the outcome of that action, the role of the HSA is to assess whether or not, insofar as is reasonably practicable, the employer's actions were adequate.

If the complaint is from a person accused of bullying, similarly, the HSA role is the same – to assess the employer's processing of the matter.

In each of the above scenarios, the HSA is a neutral party whose remit is to ensure the safety and health of the employee through the reasonable and practical actions provided for by employers in their systems of work generally and the management of the issue specifically.

The HSA has the statutory remit to ensure employer duties of care to all employees and management of improper conduct at work, where the hazard of bullying exists, is upheld.

The HSA can, where an employer fails to act reasonably in an existing bullying matter, issue enforcement action in various forms, from verbal advice to written advice, an Improvement Direction or an Improvement Notice. The HSA can also, after investigation, forward a file, with recommendations, to the Director of Public Prosecution (DPP) for their decision as to the prosecution of employers where there is evidence that the employers have failed in their duty to protect an employee or employees from the harmful fallout of bullying.

The HSA has no role in the sanction or disciplinary actions taken in these matters and does not have a role in mediation, negotiation or conflict resolution between parties to a bullying case.

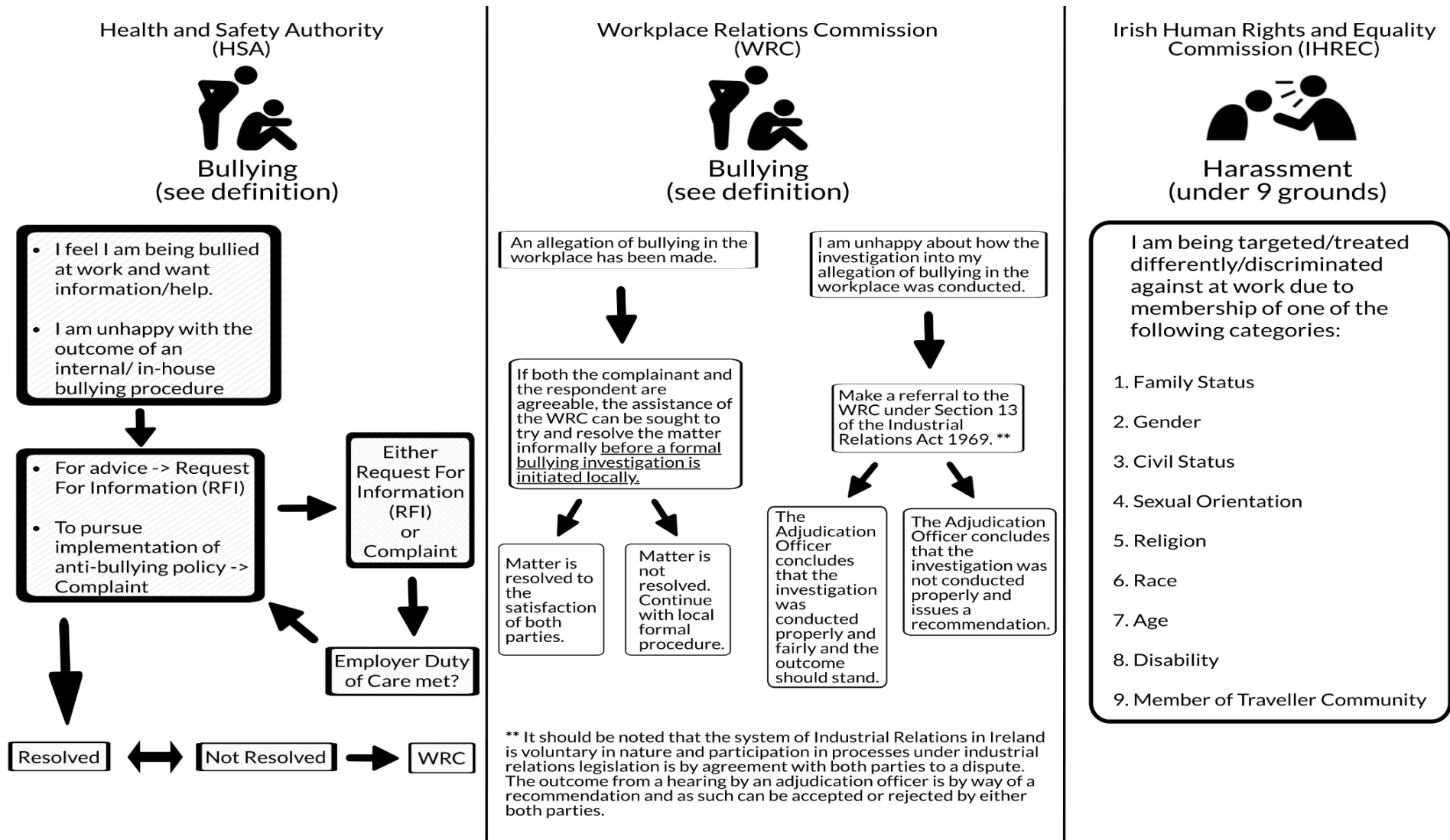
6.2 Role of the WRC

The WRC's objective at all times is to achieve harmonious working relations between employers and employees. The Commission would always encourage local discussion on, and resolution of, disputes and issues which arise in the workplace including cases of alleged bullying. The Workplace Relations Commission delivers several services which may assist.

- Individual and collective workplace mediation focus on seeking to resolve the matter at an early stage locally before a formal process is initiated. This is dependent on the agreement of the parties concerned to participate and is provided by the WRC on an ad hoc basis.
- Workplace mediation provides a confidential, professional, efficient and effective process to assist all parties in reaching a mutually acceptable agreement or outcome to a dispute or claim. This approach often helps to avoid more formal processes.
- It is particularly suited to disputes involving individuals or small groups of workers who find themselves dealing with situations which may involve the following interpersonal differences, conflicts, difficulties in working together, breakdown in a working relationship.
- Reviewing overall workplace relations generally in organisations and assisting with the implementation of positive engagement measures.

The provision of Adjudication services under Section 13 of the Industrial Relations Act 1969 following the exhaustion of internal procedures (note: the grounds of a referral to an Adjudication Officer is around the conduct of an investigation in terms of fairness and adherence to fair process and procedure).

6.3 Role of HSA & WRC in the Prevention of Workplace Bullying



Appendix 1

HOW TO PREPARE AN ANTI BULLYING POLICY

Prevention is the best way to avoid the risk of bullying at work. An effective policy, and a strong commitment to implementing it is required. The purpose of an effective policy is not simply to prevent improper conduct and behaviour but also to encourage best practice and a safe and harmonious workplace where such behaviour is unlikely to occur.

Employers should therefore adopt, implement and monitor a comprehensive, effective and accessible policy on bullying at work.

Preparing the Policy

Strategies to create and maintain a working environment in which the dignity and respect of employees are appreciated and upheld are most likely to be effective when they are jointly agreed. In this way, employers and other parties to the employment relationship can create an anti-bullying culture and share a sense of responsibility for that culture. In very small businesses which may not have an employee representative structure, the policy and strategy should be advised to all employees.

The policy and complaints procedure should be adopted, where appropriate, insofar as is practicable with clients, customers and other business contacts after consultation or negotiation with trade union or employee representatives, on its content and implementation. Simple direct language should be used in the policy. Information given to employees should be in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned.

The policy document should be written, dated and signed by a responsible person at senior management level and updated when appropriate, for example following a change that might impact the validity of the original risk assessment.

As required under safety and health laws and in keeping with normal industrial relations practice, there should be prior consultation, and participation where appropriate, regarding the policy and its implementation, with employees or their representatives, including the **Safety Representative** or the **Safety Committee**.

The **policy** should set out a complaints procedure as recommended within this Code.

It is prudent to keep a record of consultation actions in case of future requirement.

Core Elements and Implementation Steps

Employer's declaration

The Anti-Bullying Policy should declare:

- the employer's commitment to ensuring that the place of work is free from bullying at work and that the work environment is aimed at providing a high quality product or service in an atmosphere of respect, collaboration, openness, safety and equality;
- that all employees have the right to be treated with dignity and respect at work;
- that the risk of bullying has been assessed and preventive measures included, where necessary, in the **Safety Statement**;
- that consultation with employees or their representatives, including the **Safety Representative** and the **Safety Committee**, as appropriate, has taken place as regards the risk of bullying at work and preventive measures;
- that human resource management policies and practices will strive to prevent bullying at work;
- that the policy will be updated to reflect the company's experiences in implementing it, relevant changes in the workplace and any external factors that are relevant;
- that employees also have responsibility in creating and contributing to the maintenance of a work environment free from bullying or from conduct likely to contribute to bullying;
- that complaints by employees of bullying at work will be treated with fairness, sensitivity, respect and confidentiality for all parties concerned;
- that a person or persons alleged to have bullied will be afforded natural justice and treated with fairness, sensitivity and respecting the need for confidentiality with all parties concerned;
- that bullying at work by the employer, by employees and by non-employees, such as clients, customers, sub-contractors and business contacts, will not be tolerated and the appropriate employing organisation should deal with the complaint in line with these procedures, which could lead to disciplinary procedures being applied;
- that following the application of the disciplinary procedure, if a vexatious complaint of bullying is substantiated it may result in disciplinary sanction; and
- ***NOTE: Should disciplinary procedures be initiated following on from a bullying investigation, those procedures would fall outside the scope of this Code.***

Scope

The **policy** should

- describe what is meant by bullying at work as set out above under **What is bullying at work?**;
- include a non-exhaustive list of examples of bullying behaviour relevant to the particular employment;
- give the name or job title of the person who may be approached by a person wishing to complain of bullying at work;
- state that the protection extends to;
 - bullying at work by management, fellow employees, subordinates, clients, customers and other business contacts;
 - beyond the place of work to off-site and to work-related social events
- state that all complaints of bullying will be taken seriously and will be followed through to resolution and that employees who make a complaint will not be victimised;

Allocation of responsibilities as regards prevention of bullying at work

The policy should state that management, others in positions of authority and workplace representatives have a particular responsibility to ensure that bullying at work does not occur and that complaints are addressed promptly. The policy should state that in particular, management should:

- provide good example by treating all in the place of work with courtesy and respect;
- promote awareness of the **policy** and complaints procedures;
- be vigilant for signs of bullying at work through observation and through seeking employee feedback and take action before a problem escalates;
- deal sensitively with employees involved in a bullying complaint whether as complainant or alleged bully;
- explain the procedures to be followed if a complaint of bullying at work is made;
- ensure that an employee making a complaint is not victimised for doing so; and
- monitor and follow up the situation after a complaint is made so that the bullying at work does not recur.

Trade Unions

The policy should address the contribution to be made by the trade union/s, as appropriate, including as regards the prevention of bullying in the workplace through their participation in the development and implementation of policies and procedures, through their information and training services, and through the collective bargaining process. Trade unions may also play a role in providing information, advice and representation to employees who have been bullied at work, and to employees against whom allegations of bullying at work have been made.

Employees

The policy should indicate that employees can contribute to achieving a work environment which does not tolerate bullying at work. This could also include co-operating with preventive measures introduced by management, and also through trade union strategies to eliminate or avoid bullying at work. Employees should recognise that if an investigator finds facts which evidence bullying at work, the matter may be dealt with through the disciplinary procedure. Equally if the investigator finds facts which evidence a vexatious complaint, this may also be dealt with through the disciplinary procedure.

Non-Employees

The policy should indicate that bullying at work by non-employees such as clients, customers and business contacts is not tolerated and may lead to termination of contracts or suspension of services, or to exclusion from a premises or the imposition of other sanctions, as appropriate.

Communication of Policy

The policy should include a commitment to effective communication of the policy. It should be communicated effectively to all those potentially affected by it, including management, employees, customers, clients and other business contacts, such as those who supply and receive goods and services. Effective means of communicating a policy could include newsletters, training manuals, training courses, leaflets, websites, emails, toolbox talks and notice boards.

Communication to Employees

New employees, including those in management and all other positions of responsibility, should be made aware of the policy as part of any formal induction process to familiarise them with their job and their working environment and any rules and regulations that apply.

Where a staff handbook is distributed to employees as part of the induction process, the **Anti-Bullying Policy** should be included.

Existing employees should receive updated and regular communication on the policy.

Communication to Non-Employees

A summary of the **Anti-Bullying Policy** should be prominently displayed where appropriate and as identified on the risk assessment, such as at places where members of the public, clients, and customers attend.

Monitoring

The policy should include a commitment to monitoring and recording incidents of bullying at work.

Statistics and information gathered from such monitoring should be recorded and used to assist the employer take corrective action or achieve continuous improvement in their bullying prevention policy and procedure.

Training and Supervision

Employees should be provided with such information, training, development and supervision as is necessary to ensure the prevention of bullying. This should include:

- making employees aware of the **Anti-Bullying Policy**;
- information on the appropriate behaviour to comply with the terms of the policy;
- training, if needed, in order to comply with the policy; and
- assistance, if necessary, to overcome a bullying incident, as well as adequate and informed supervision of the work environment.

The policy should include commitments to staff training and supervision as identified in the risk assessment on issues related to bullying at work, including the provision of training for managers, supervisors and for all staff, at induction or through appropriate awareness raising initiatives. Such training should identify the factors which contribute to a working environment free of bullying and familiarise participants with their responsibilities under the policy and any problems they are likely to encounter.

Such training is especially important for those members of staff responsible for supervision and for implementing the **policy** and responding to complaints.

Best practice would ensure that records are kept by the employer of all such training.

Reviews

The policy should include a commitment to review on a regular basis in line with experience in the employment, changes in the law, relevant case law or other developments.

A responsible person should be named in the policy to ensure that monitoring, training and reviews take place.

Appendix 2

Extracts from the Safety, Health and Welfare at Work Act 2005.

Section 8: General duties of employer

8. (1) Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(2) Without prejudice to the generality of *subsection (1)*, the employer's duty extends, in particular, to the following:

- (a) managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;
- (b) managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of his or her employees at risk;
- (c) as regards the place of work concerned, ensuring, so far as is reasonably practicable:
 - (i) the design, provision and maintenance of it in a condition that is safe and without risk to health;
 - (ii) the design, provision and maintenance of safe means of access to and egress from it; and
 - (iii) the design, provision and maintenance of plant and machinery or any other articles that are safe and without risk to health;
- (d) ensuring, so far as it is reasonably practicable, the safety and the prevention of risk to health at work of his or her employees relating to the use of any article or substance or the exposure to noise, vibration or ionising or other radiations or any other physical agent;
- (e) providing systems of work that are planned, organised, performed, maintained and revised as appropriate so as to be, so far as is reasonably practicable, safe and without risk to health;
- (f) providing and maintaining facilities and arrangements for the welfare of his or her employees at work;
- (g) providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees;
- (h) determining and implementing the safety, health and welfare measures necessary for the protection of the safety, health and welfare of his or her employees when identifying hazards and carrying out a risk assessment under *section 19* or when preparing a safety statement under *section 20* and ensuring that the measures take account of changing circumstances and the general principles of prevention specified in *Schedule 3*;

- (i) having regard to the general principles of prevention in *Schedule 3*, where risks cannot be eliminated or adequately controlled or in such circumstances as may be prescribed, providing and maintaining such suitable protective clothing and equipment as is necessary to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;
- (j) preparing and revising, as appropriate, adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger;
- (k) reporting accidents and dangerous occurrences, as may be prescribed, to the Authority or to a person prescribed under *section 33*, as appropriate; and
- (l) obtaining, where necessary, the services of a competent person (whether under a contract of employment or otherwise) for the purpose of ensuring, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(3) Any duty imposed on an employer under the relevant statutory provisions in respect of any of his or her employees shall also apply in respect of the use by him or her of the services of a fixed-term employee or a temporary employee.

(4) For the duration of the assignment of any fixed-term employee or temporary employee working in his or her undertaking, it shall be the duty of every employer to ensure that working conditions are such as will protect the safety, health and welfare at work of such an employee.

(5) Every employer shall ensure that any measures taken by him or her relating to safety, health and welfare at work do not involve financial cost to his or her employees.

Section 9: Information for employees

9. (1) Without prejudice to the generality of *section 8*, every employer shall, when providing information to his or her employees under that section on matters relating to their safety, health and welfare at work ensure that the information:

- (a) is given in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and
- (b) includes the following information:
 - (i) the hazards to safety, health and welfare at work and the risks identified by the risk assessment;
 - (ii) the protective and preventive measures to be taken concerning safety, health and welfare at work under the relevant statutory provisions in respect of the place of work and each specific task to be performed at the place of work; and
 - (iii) the names of persons designated under *section 11* and of safety representatives selected under *section 25*, if any.

(2) Where an employee of another undertaking is engaged in work activities in an employer's undertaking, that employer shall take measures to ensure that the employee's employer receives adequate information concerning the matters referred to in *subsection (1)*.

(3) Every employer shall ensure that employees appointed under *section 18* and safety representatives, if any, have access, for the purposes of performing their functions relating to the safety, health and welfare of employees, to:

- (a) the risk assessment carried out under *section 19*;
 - (b) information relating to accidents and dangerous occurrences required to be reported to the Authority or a person prescribed under *section 33* under the relevant statutory provisions; and
 - (c) any information arising from protective and preventive measures taken under the relevant statutory provisions or provided by the Authority, a person prescribed under *section 33*, or a person referred to in *section 34(2)*.
- (4) (a) Where an employer proposes to use the services of a fixed-term employee or a temporary employee, the employer shall, prior to commencement of employment, give information to the employee relating to:
- (i) any potential risks to the safety, health and welfare of the employee at work;
 - (ii) health surveillance;
 - (iii) any special occupational qualifications or skills required in the place of work; and
 - (iv) any increased specific risks which the work may involve.
- (b) Where an employer proposes to use the services of a temporary employee, the employer shall:
- (i) specify to the temporary employment business concerned the occupational qualifications necessary for and the specific features of the work for which such an employee is required; and
 - (ii) ensure that the temporary employment business gives the information referred to in paragraph (a) to the employee.

(2) The temporary employment business referred to in *subsection (4)(b)* shall give to the employee the information referred to in *subsection (4)(b)(i)*.

Section 10: Instruction, training and supervision of employees

10. (1) Without prejudice to the generality of *section 8* and having regard to *sections 25* and *26*, every employer shall, when providing instruction, training and supervision to his or her employees in relation to their safety, health and welfare at work, ensure that:

- (a) instruction, training and supervision is provided in a form, manner and, as appropriate, language that is reasonably likely to

be understood by the employee concerned;

- (b) employees receive, during time off from their work, where appropriate, and without loss of remuneration, adequate safety, health and welfare training, including, in particular, information and instructions relating to the specific task to be performed by the employee and the measures to be taken in an emergency;
- (c) in relation to any specific task assigned to an employee, that his or her capabilities in relation to safety, health and welfare are taken into account; and
- (d) in the case of:
 - (i) a class or classes of particularly sensitive employees to whom any of the relevant statutory provisions apply; or
 - (ii) any employee or group of employees exposed to risks expressly provided for under the relevant statutory provisions, the employees concerned are protected against the dangers that specifically affect them.

(2) Training under this section shall be adapted to take account of new or changed risks to safety, health and welfare at work and shall, as appropriate, be repeated periodically.

(3) Training under this section shall be provided to employees:

- (a) on recruitment;
- (b) in the event of the transfer of an employee or change of task assigned to an employee;
- (c) on the introduction of new work equipment, systems of work or changes in existing work equipment or systems of work; and
- (d) on the introduction of new technology.

(4) Where, in respect of any particular work, competency requirements are prescribed, the employer shall provide for the release of employees, during working hours, where appropriate, and without loss of remuneration, for the purpose of attending training in matters relating to safety, health and welfare at work as regards the particular work.

(5) Every employer shall ensure that persons at work in the place of work concerned who are employees of another employer receive instructions relating to any risks to their safety, health and welfare in that place of work as necessary or appropriate.

(6) Every employer who uses the services of a fixed-term employee or a temporary employee shall ensure that the employee receives the training appropriate to the work which he or she is required to carry out having regard to his or her qualifications and experience.

Section 13: Duties of employee

(1) An employee shall, while at work:

- (a) comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect his or her safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work;
- (b) ensure that he or she is not under the influence of an intoxicant to the extent that he or she is in such a state as to endanger his or her own safety, health or welfare at work or that of any other person;
- (c) if reasonably required by his or her employer, submit to any appropriate, reasonable and proportionate tests for intoxicants by, or under the supervision of, a registered medical practitioner who is a competent person, as may be prescribed;
- (d) co-operate with his or her employer or any other person so far as is necessary to enable his or her employer or the other person to comply with the relevant statutory provisions, as appropriate;
- (e) not engage in improper conduct or other behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person;
- (f) attend such training and, as appropriate, undergo such assessment as may reasonably be required by his or her employer or as may be prescribed relating to safety, health and welfare at work or relating to the work carried out by the employee;
- (g) having regard to his or her training and the instructions given by his or her employer, make correct use of any article or substance provided for use by the employee at work or for the protection of his or her safety, health and welfare at work, including protective clothing or equipment;
- (h) report to his or her employer or to any other appropriate person, as soon as practicable:
 - (i) any work being carried on, or likely to be carried on, in a manner which may endanger the safety, health or welfare at work of the employee or that of any other person;
 - (ii) any defect in the place of work, the systems of work, any article or substance which might endanger the safety, health or welfare at work of the employee or that of any other person; or
 - (iii) any contravention of the relevant statutory provisions which may endanger the safety, health and welfare at work of the employee or that of any other person, of which he or she is aware.

(2) An employee shall not, on entering into a contract of employment, misrepresent himself or herself to an employer with regard to the level of training as may be prescribed under *subsection (1)(f)*.

Section 14: Interference, misuse etc.

14. A person shall not intentionally, recklessly or without reasonable cause:
- (a) interfere with, misuse or damage anything provided under the relevant statutory provisions or otherwise for securing the safety, health and welfare of persons at work; or
 - (b) place at risk the safety, health or welfare of persons in connection with work activities.

Section 19: Hazard identification and risk assessment

19. (1) Every employer shall identify the hazards in the place of work under his or her control, assess the risks presented by those hazards and be in possession of a written assessment (to be known and referred to in this Act as a “risk assessment”) of the risks to the safety, health and welfare at work of his or her employees, including the safety, health and welfare of any single employee or group or groups of employees who may be exposed to any unusual or other risks under the relevant statutory provisions.

(2) For the purposes of carrying out a risk assessment under *subsection (1)*, the employer shall, taking account of the work being carried on at the place of work, have regard to the duties imposed by the relevant statutory provisions.

- (3) The risk assessment shall be reviewed by the employer where -
- (a) there has been a significant change in the matters to which it relates; or
 - (b) there is another reason to believe that it is no longer valid, and, following the review, the employer shall amend the risk assessment as appropriate.

(4) In relation to the most recent risk assessment carried out by an employer, he or she shall take steps to implement any improvement considered necessary relating to the safety, health and welfare at work of employees and to ensure that any such improvement is implemented in respect of all activities and levels of the place of work.

(5) Every person to whom *Sections 12 or 15* applies shall carry out a risk assessment in accordance with this section to the extent that his or her duties under those sections may apply to persons other than his or her employees.

Section 20: Safety statement

20. (1) Every employer shall prepare, or ask to be prepared, a written statement (to be known and referred to in this Act as a “safety statement”), based on the identification of the hazards and the risk assessment carried out under *section 19*, specifying the manner in which the safety, health and welfare at work of his or her employees shall be secured and managed.

(2) Without prejudice to the generality of *subsection (1)*, every employer shall ensure that the safety statement specifies:

- (a) the hazards identified and the risks assessed;
- (b) the protective and preventive measures taken and the resources provided for protecting safety, health and welfare at the place of work to which the safety statement relates;
- (c) the plans and procedures to be followed and the measures to be taken in the event of an emergency or serious and imminent danger, in compliance with *sections 8 and 11*;
- (d) the duties of his or her employees regarding safety, health and welfare at work, including co-operation with the employer and any persons who have responsibility under the relevant statutory provisions in matters relating to safety, health and welfare at work;
- (e) the names and, where applicable, the job title or position held of each person responsible for performing tasks assigned to him or her pursuant to the safety statement; and
- (f) the arrangements made regarding the appointment of safety representatives and consultation with, and participation by, employees and safety representatives, in compliance with *sections 25 and 26*, including the names of the safety representative and the members of the safety committee, if appointed.

(3) Every employer shall bring the safety statement, in a form, manner and, as appropriate, language that is reasonably likely to be understood, to the attention of:

- (a) his or her employees, at least annually and, at any other time, following its amendment in accordance with this section;
- (b) newly-recruited employees upon commencement of employment; and
- (c) other persons at the place of work who may be exposed to any specific risk to which the safety statement applies.

(2) Where there are specific tasks being performed at the place of work that pose a serious risk to safety, health or welfare, an employer shall bring to the attention of those affected by that risk relevant extracts of the safety statement setting out:

- (a) the risk identified;
- (b) the risk assessment; and
- (c) the protective and preventive measures taken in accordance with the relevant statutory provisions in relation to that risk.

(5) Every employer shall, taking into account the risk assessment carried out under *section 19*, review the safety statement where:

- (a) there has been a significant change in the matters to which it refers;
- (b) there is another reason to believe that the safety statement is no longer valid; or

- (c) an inspector in the course of an inspection, investigation, examination, inquiry under *section 64* or otherwise directs that the safety statement be amended within 30 days of the giving of that direction; and, following the review, the employer shall amend the safety statement as appropriate to co-operate.

(6) Every employer who is conducting activities, as may be prescribed in accordance with this subsection, who contracts with another employer for that employer to provide services to him or her shall require that that employer is in possession of an up-to-date safety statement as required under this section.

(7) A copy of a safety statement, or relevant extract of it, shall be kept available for inspection at or near every place of work to which it relates while work is being carried out there.

(8) It shall be sufficient compliance with this section by an employer employing three or less employees to observe the terms of a code of practice, if any, relating to safety statements which applies to the class of employment covering the type of work activity carried on by the employer.

(9) Every person to whom *section 12 or 15* applies shall prepare a safety statement in accordance with this section to the extent that his or her duties under those sections may apply to persons other than his or her employees.

Section 60: Codes of practice.

60. (1) For the purpose of providing practical guidance to employers, employees and any other persons to whom this Act applies with respect to safety, health and welfare at work, or the requirements or prohibitions of any of the relevant statutory provisions, the Authority:

- (a) may, and shall if so requested by the Minister, prepare and publish codes of practice; and
- (b) may approve of a code of practice or any part of a code of practice made or published by any other body.

(2) Before publishing or approving of a code of practice or any part of a code of practice under this section, the Authority:

- (a) shall obtain the consent of the Minister;
- (b) may publish in such manner as the Authority considers appropriate a draft of the code of practice or sections of a draft code of practice and shall give persons one month from the date of publication of the draft code or sections within which to make written representations to the Authority in relation to the draft code or sections of the draft code, or such further period, not exceeding 28 days, as the Authority in its absolute discretion thinks fit; and
- (c) following consultation and, where relevant, having considered the representations, if any, made, shall submit the draft code to the Minister for his or her consent to its publication or approval under this section, with or without modification.

(3) Where the Authority publishes or approves of a code of practice or approves of any part of a code of practice, it shall publish a notice of such publication or approval in *Iris Oifigiúil* and that notice shall:

- (a) identify the code;
- (b) specify the matters relating to safety, health and welfare at work or the relevant statutory provisions in respect of which the code is published or approved of; and
- (c) specify the date on which the code shall come into operation.

(4) The Authority may with the consent of the Minister and following consultation with any other person or body that the Authority considers appropriate or as the Minister directs:

- (a) amend or revoke any code of practice or part of any code of practice prepared and published by it under this section; or
- (b) withdraw its approval of any code of practice or part of any code of practice approved by it under this section.

(5) Where the Authority amends or revokes, or withdraws its approval of a code of practice or any part of a code of practice published or approved under this section, it shall publish notice of the amendment, revocation or withdrawal, as the case may be, in *Iris Oifigiúil*.

(6) The Authority shall make available for public inspection without charge

at its principal office during normal working hours:

- (a) a copy of each code of practice published or approved by it; and
- (b) where a code of practice has been amended, a copy of the code as so amended.

(7) Notwithstanding the repeal of the Act of 1989 by *section 4*, a code of practice in operation immediately before the commencement of that section continues to be a code of practice as if prepared and published under this section.

Section 61: Use of codes of practice in criminal proceedings.

61. (1) Where in proceedings for an offence under this Act relating to an alleged contravention of any requirement or prohibition imposed by or under a relevant statutory provision being a provision for which a code of practice had been published or approved by the Authority under *section 60* at the time of the alleged contravention, *subsection (2)* shall have effect with respect to that code of practice in relation to those proceedings.

- (2) (a) Where a code of practice referred to in *subsection (1)* appears to the court to give practical guidance as to the observance of the requirement or prohibition alleged to have been contravened, the code of practice shall be admissible in evidence.
- (b) Where it is proved that any act or omission of the defendant alleged to constitute the contravention:
 - (i) is a failure to observe a code of practice referred to in *subsection (1)*; or
 - (ii) is a compliance with that code of practice, then such a failure or compliance is admissible in evidence.

(3) A document bearing the seal of the Authority and purporting to be a code of practice or part of a code of practice published or approved of by the Authority under this section shall be admissible as evidence in any proceedings under this Act.

Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005)

SCHEDULE 3

Section 8

General Principles of Prevention

1. The avoidance of risks.
2. The evaluation of unavoidable risks.
3. The combating of risks at source.
4. The adaptation of work to the individual, especially as regards the design of places of work, the choice of work equipment and the choice of systems of work, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing the effect of this work on health.
5. The adaptation of the place of work to technical progress.
6. The replacement of dangerous articles, substances or systems of work by safe or less dangerous articles, substances or systems of work.
7. The giving of priority to collective protective measures over individual protective measures.
8. The development of an adequate prevention policy in relation to safety, health and welfare at work, which takes account of technology, organisation of work, working conditions, social factors and the influence of factors related to the working environment.
9. The giving of appropriate training and instructions to employees.

Appendix 3

Some relevant Organisations and Publications

Health and Safety Authority (website: <https://www.hsa.ie/eng/>)

Guidelines on Risk Assessment and Safety Statements
Workplace Safety and Health Management

Workplace Relations Commission (website: www.wrc.ie)

Procedures for Addressing Bullying in the Workplace
Grievance and Disciplinary Procedures
Voluntary Dispute Resolution SI 76 of 2004

Irish Human Rights and Equality Commission (IHRC)

(website: <https://www.ihrec.ie/>)

Code of Practice on Sexual Harassment and Harassment at Work

Department of Enterprise Trade and and Employment

Bullying in the Workplace, Survey Reports, 2007

(Website: <https://enterprise.gov.ie/en/Publications/Bullying-in-the-Workplace-Survey-Reports-2007.html>)

GIVEN under my hand,
22 December 2020

DAMIEN ENGLISH,
Minister of State at the Department of Enterprise, Trade and
Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The effect of this Order is to declare that the draft code of practice set out in the Schedule to this Order is a code of practice for the purposes of the Industrial Relations Act 1990.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2,
D02 DR67.

Teil: 076 110 6834
r-post: publications@opw.ie

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2,
D02 DR67.

Tel: 076 110 6834
E-mail: publications@opw.ie

€8.00

